

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 01-2641

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United States of America,

Appellee,

v.

James Wesley Mooty, II,

Appellant.

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Appeal from the United States  
District Court for the  
Western District of Arkansas.

[UNPUBLISHED]

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Submitted: January 4, 2002

Filed: February 12, 2002

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Before McMILLIAN, MORRIS SHEPPARD ARNOLD, and BYE, Circuit Judges.

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PER CURIAM.

James Mooty pleaded guilty to three counts of mail fraud and aiding and abetting, in violation of 18 U.S.C. §§ 1341, 2; and to two counts of wire fraud and aiding and abetting, in violation of 18 U.S.C. §§ 1343, 2. The district court sentenced him to 20 months imprisonment on each count, to be served concurrently, and concurrent 3-year terms of supervised release. Mr. Mooty appeals his sentence, challenging the district court's application of sentencing enhancements under U.S.S.G. § 3A1.1(b)(1) and (2).

The Guidelines provide for a 2-level enhancement where the defendant “knew or should have known that a victim of the offense was a vulnerable victim.” See U.S.S.G. § 3A1.1(b)(1). We conclude that the district court did not clearly err in applying this enhancement. The record before the district court at sentencing demonstrated that Mr. Mooty knew, or should have known, that his victims were particularly vulnerable because they lived out of state. See United States v. Moskal, 211 F.3d 1070, 1073 (8th Cir. 2000) (standard of review). The Guidelines provide for an additional 2-level enhancement where “the offense involved a large number of vulnerable victims.” See U.S.S.G. § 3A1.1(b)(2). We believe that application of this enhancement, however, was unwarranted. The record supports a finding that seven victims were particularly vulnerable to Mr. Mooty’s fraudulent activity, and we hold that seven is not, as a matter of law, a “large number” within the meaning of section 3A1.1(b)(2).

Accordingly, we vacate Mr. Mooty’s sentence and remand to the district court for resentencing without the 2-level section 3A1.1(b)(2) enhancement. We deny Mr. Mooty’s motion to strike an addendum to the government’s brief.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.